

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Esparza's Welding and
Machine Shop, Inc.
114 North Center Street
P.O. Box 700
Westmorland, California 92281

EPA ID No. CAL000201050
Respondent.

Docket HWCA AGOO/01-4002

STIPULATION AND ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Esparza's Welding and Machine Shop, Inc. (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order issued by the Department on January 24, 2001. (Attached as Exhibit 1.)
2. The parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety Code §25187.
4. Respondent waives any right to a hearing in this matter.
5. This Order shall constitute full settlement of the violations alleged in the Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.
6. Respondent admits the violations stated in the Enforcement Order.

7. On February 2, 2004, Respondent filed Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court-Southern District of California, case no. 04-00943-JM11 (Bankruptcy). Respondent's Modified First Amended Plan of Reorganization Dated November 5, 2004 (Plan of Reorganization) was approved by the Bankruptcy Court on March 7, 2005, effective April 1, 2005 (Effective Date). It is the intent of this Order to implement the applicable provisions of the Plan of Reorganization.

8. SCHEDULE FOR COMPLIANCE

8.1 Respondent shall comply with the following:

8.1.1 Respondent shall not dispose of hazardous wastes into the environment;

8.1.2 Respondent shall not place any hazardous wastes into containers which are destined for a Class III landfill.

8.1.3 Within 9 months of the Effective Date, Respondent shall submit a written response to the Summary of Violations documenting corrective actions taken or proposed by Respondent for purposes of compliance with this Order.

8.1.4 Respondent shall keep all hazardous waste containers closed, except when adding or removing waste

8.1.5 Respondent shall properly label all hazardous waste containers.

8.1.6 Respondent shall characterize its waste streams prior to disposal at an appropriate facility.

8.1.7 Within 9 months of the Effective Date, Respondent shall contact the Permitting and Corrective Action Branch to continue efforts to investigate and remediate the contamination from Respondent's actions at the Alamo River site leased by Respondent.

8.2 Submittals: All submittals from Respondent pursuant to this Order shall be sent to:

Juan M. Jimenez, Chief
Border Unit
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 501
San Diego, California 92123

8.3 Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be-required.

8.4 Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified; or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

8.5 Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

8.6 Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

8.7 Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future Operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

8.8 Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

8.9 Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all

sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

8.10 Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 10.3 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

8.11 Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

8.12 Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

8.13 Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

9. PAYMENTS

9.1 Respondent shall pay the Department's administrative costs in the sum of \$37,500.00 (the Payment Obligation) and shall pay a penalty in the sum of \$12,500.00, which \$12,500.00 penalty may be satisfied by Respondent as follows:

a. \$5,000 – attendance of three (3) senior officers or employees of Respondent at a 3-day program of California Hazardous Materials Compliance not later than March 31, 2006; and

b. \$7,500 – performance of a Supplemental Environmental Project (or Projects) (SEP) approved by the Department not later than the last day of the sixth year after the Effective date. In particular, Respondent shall provide a cashier's check in the amount of \$ 7,500.00 to the office of the Executive Secretary, Imperial County Fish and Game Commission, at 1002 State Street, El Centro, California, 92244.

Respondent shall provide to the Department documentary proof of attendance at the program of California Hazardous Materials Compliance and of performance of the SEP(s).

9.2 The Payment Obligation shall be paid in quarterly installments without interest, each installment in the sum of \$1,875.00, the first quarterly installment is due the last day of the first quarter after the Effective Date and the final installment is due on the last day of the last quarter of the fifth year after the Effective date.

Respondent's payment checks shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket HWCA AG00/01-4002, as shown in the heading of this case.

Respondent shall mail the payments to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806

Photocopies of the checks shall be sent to:

Juan M. Jimenez, Chief
Border Unit
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123 -

And to:

Yvonne Sanchez
Branch Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue,
Cypress, California 90630

If Respondent fails to make payments as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code §25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

10. OTHER PROVISIONS

10.1 Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

10.2 Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such

failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

10.3 Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

10.4 Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

DATED: January 11, 2006

Original signed by Juan Jimenez

JUAN JIMENEZ

Supervising Hazardous Substance Scientist
Department of Toxic Substances Control

DATED: December 30, 2005

ESPARZA'S WELDING AND MACHINE SHOP, INC.

By: Original signed by Tiberio Esparza

Tiberio Esparza, President

APPROVED:

Procopio, Cory, Hargreaves & Savitch LLP

By: Original signed by Robert G. Russell

ROBERT G. RUSSELL, JR.

Attorney's for respondent